UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

SHREVEPORT DIVISION

CRYSTAL OIL COMPANY and CRYSTAL EXPLORATION AND PRODUCTION COMPANY	CIVIL ACTION NO. 95-2115
versus	JUDGE STAGG
ATLANTIC RICHFIELD COMPANY	MAGISTRATE JUDGE PAYNE

MEMORANDUM RULING

Plaintiffs Crystal Oil Company ("Crystal") and Crystal Exploration and Production Company ("CEPCO") seek a judgment against defendant Atlantic Richfield Company ("ARCO") declaring that any claims ARCO has against plaintiffs for environmental clean-up costs associated with a mining facility in Colorado were discharged in Crystal's Chapter 11 bankruptcy proceedings before the Bankruptcy Court for the Western District of Louisiana. Alternatively, plaintiffs seek a judgment declaring that ARCO's claims are barred by the terms of the contract through which ARCO acquired the mining facility.

ARCO answered the complaint, denied that its claims are barred by the bankruptcy discharge or the contract between the parties, and asserted a counterclaim for the environmental clean-up costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq. Pursuant to 28 U.S.C. §1404(a), ARCO also moved for a transfer of venue to the United States District Court for the District of Colorado. In

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addition to contesting that motion, Crystal filed a motion to refer the bankruptcy discharge issue to the Bankruptcy Court pursuant to 28 U.S.C. §157.

For the reasons set forth below, the court concludes that the plaintiffs' claim for declaratory relief on the bankruptcy issue should be severed from the remainder of the action and referred to the Bankruptcy Court. The remainder of the action, consisting of plaintiffs' contractual claim and ARCO's counterclaim, should be transferred to the United States District Court for the District of Colorado pursuant to 28 U.S.C. §1404(a).

FACTS

This controversy finds its roots in metal ore mining operations located in or near Rico, Colorado. For much of this century, the mine was operated by the Rico-Argentine Mining Company. In 1977, CEPCO, a wholly owned subsidiary of Crystal, obtained ownership of the mine. In 1980, The Anaconda Company, which was later merged into ARCO, purchased the mine from CEPCO.

On October 1, 1986, Crystal instituted Chapter 11 proceedings in the United States District Court for the Western District of Louisiana. ARCO filed a proof of claim in that proceeding but the subject matter of that claim did not relate to the environmental clean-up costs at issue in this litigation. On December 31, 1986, the Bankruptcy Court entered an order confirming Crystal's plan of reorganization. The confirmation order provided in pertinent part that:

> It is further ORDERED, ADJUDGED AND DECREED that the provisions of the Plan shall bind all creditors and interest holders, whether or not they have accepted the Plan, and shall discharge Crystal from all debts that arose before October 1, 1986, and that the distributions provided for under the Plan shall be in exchange for and in complete satisfaction, discharge and release of all claims against and interests in Crystal or any of its assets or properties, including any claim or interest accruing after October 1, 1986, and prior to the Effective Date;
>
> ...
>
> It is further ORDERED, ADJUDGED AND DECREED that as of the Effective Date all property of Crystal shall be free and clear of all claims and interests of creditors and equity security holders, except for obligations imposed under the Plan;

At some point prior to 1995, ARCO learned that the Environmental Protection Agency ("EPA") was investigating the Rico site to assess environmental contamination from mine drainage.[1] According to ARCO, the EPA's ongoing investigation "is a precursor to possible listing of the Site on the National Priority List ("NPL") established under [CERCLA]." (Original Mem. in Support of Defendant's Motion to Transfer Venue at 2-3). In the spring of 1995, ARCO contacted Crystal and advised that it desired Crystal's participation in a voluntary cleanup plan for the RICO site.

[1] Much attention is devoted in the briefs of the parties to the disputed factual question of when ARCO learned of the EPA's investigation, or when it otherwise learned of any facts indicating that it had a claim against Crystal for environmental response costs. This ruling does not purport to make any findings of fact as to that issue. As discussed below, the Bankruptcy Court should decide any factual and legal issues relevant to Crystal's assertion that its Chapter 11 discharge bars ARCO's claims.

On November 30, 1995, Crystal and CEPCO filed this action against ARCO under the Declaratory Judgment Act, 28 U.S.C. §§2201-2202. The complaint is divided into two claims: (1) "Claim for Declaratory Judgment Under Contract" (hereafter, "the Contract Claim") and (2) "Claim for Declaratory Judgment Due to Discharge in Bankruptcy" (hereafter, "the Discharge Claim").

LAW AND ARGUMENT

For reasons discussed throughout this ruling, the Discharge Claim involves facts and issues wholly distinct from the Contract Claim and ARCO's CERCLA counterclaim. Part I of the opinion addresses the Discharge Claim and the need to refer that aspect of the action to the Bankruptcy Court. Part II of the opinion addresses the CERCLA claim and the determination that the environmental clean-up cost controversy should be litigated in Colorado.

I.

Section 1141 of the Bankruptcy Code provides that confirmation of a plan of reorganization discharges the debtor from any "debt" that arose prior to the date of confirmation. 11 U.S.C. §1141. Section 524(a)(2) further provides that a discharge:

> operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived....

In this respect, then, the Bankruptcy Court's order confirming Crystal's Chapter 11 discharge is properly characterized as an order of injunctive relief.

Plaintiffs argue that this court, or its bankruptcy unit, must decide the issue of whether ARCO's claims are encompassed by the discharge injunction. Relying primarily on Celotex v. Edwards, --U.S.--, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995) and In re Texaco, Inc., 182 B.R. 937 (Bankr. S.D.N.Y.1995), they argue when a party seeks to alter, overturn or otherwise obtain relief from an injunction, it must seek relief from the issuing court. While the proposition cited is valid, it does not apply in this case.

In Celotex, the Bankruptcy Court for the Middle District of Florida issued an order that expressly enjoined all judgment creditors of Celotex from proceeding against any supersedeas bond posted as security for money judgments. Notwithstanding this order, the United States District Court for the Northern District of Texas allowed certain judgment creditors to execute on a bond issued by Celotex's insurer. The Fifth Circuit affirmed, in part, on the basis that application of the Bankruptcy Court's injunction would be "manifestly unfair." 115 S.Ct. at 1497. The Supreme Court reversed, holding that:

> If respondents believed the Section 105 Injunction was improper, they should have challenged it in the Bankruptcy Court, like other similarly situated bonded creditors have done. If dissatisfied with the Bankruptcy Court's ultimate decision, respondents can appeal "to the district court in which the bankruptcy judge is serving," and then to the Court of Appeals for the Eleventh Circuit. Respondents chose not to pursue this course of action, but instead to collaterally attack the Bankruptcy Court's Section 105 Injunction in the Federal Courts in Texas. This they cannot be permitted to do without seriously undercutting the orderly process of the law. 115 S.Ct. at 1501 (citations omitted; emphasis

added).

Unlike Celotex, ARCO's assertion of a CERCLA claim against Crystal does not involve a challenge to the validity of Bankruptcy Court's injunction, or a collateral attack on any order issued by that court. ARCO does not contend that the Bankruptcy Court issued an order that was wrong or that must be modified. Instead, ARCO contends that its claim against Crystal simply is not within the scope the discharge injunction. As recognized by the other authority on which Crystal relies, In re Texaco, the issuing court is not the only court which may adjudicate that claim.

In Texaco, suit was brought in state court in Louisiana by creditors who alleged that their claims against Texaco had not been discharged in Texaco's bankruptcy proceedings in New York. When confronted with a motion to enjoin the state court action, the Bankruptcy Court for the Southern District of New York recognized that "the Louisiana state court undoubtedly has concurrent jurisdiction under 28 U.S.C. §1334(b) to decide the merits of Texaco's claim of discharge...." 182 B.R. at 946.[2]

The issue was addressed even more directly in by the Second Circuit in In re Baldwin-United Corp. Litigation, 765 F.2d 343 (1985). In that case, the Chapter 11 bankruptcy of Baldwin was pending in the Southern District of Ohio. Paine Webber filed suit against Baldwin in the Southern District of New York on claims that it contended were not subject to the automatic stay issued by the

[2] As discussed further below, the New York Bankruptcy Court did in fact enjoin the Louisiana state court proceeding, but not on the basis that it had exclusive jurisdiction over the controversy.

Bankruptcy Court. The New York District Court enjoined Baldwin from petitioning the Ohio Bankruptcy Court for a stay of the New York lawsuit. This order was reversed on appeal for reasons discussed below; for present purposes, however, the case is significant because it rejects the proposition that the New York District Court was without jurisdiction to determine whether Paine Webber's claims were subject to the bankruptcy stay order:

> The initial issue is whether the District Court has jurisdiction to determine the applicability of the automatic stay. We conclude that it does....Whether the stay applies to litigation otherwise within the jurisdiction of the district court or court of appeals is an issue of law within the competence of both the court within which the litigation is pending, and the bankruptcy court supervising the reorganization. The court in which the litigation claimed to be stayed is pending has jurisdiction to determine not only its own jurisdiction but also the more precise question whether the proceeding pending before it is subject to the automatic stay. 765 F.2d at 347 (citations omitted).

Similarly, the Fifth Circuit has recognized that courts other than the Bankruptcy Court have jurisdiction to determine the applicability of a stay or discharge injunction. See, e.g., Matter of Brady, Texas Mun. Gas Corp., 936 F.2d 212, 218 (5th Cir. 1991) (recognizing not only that state court had concurrent jurisdiction to determine whether claim was covered by bankruptcy discharge, but also that, once the state court ruled, the Bankruptcy Court was required to give full faith and credit to that ruling); N.L.R.B. v. Evans Plumbing Co., 639 F.2d 291, 293 (5th Cir. 1981) (determining that Bankruptcy Court's automatic stay did

not apply to NLRB enforcement action).

Therefore, the Colorado federal district court (and any court which otherwise has jurisdiction over the parties and the subject matter) would have concurrent jurisdiction with this district's Bankruptcy Court on the issue of whether ARCO's claims are covered by the discharge injunction. The court thus expressly rejects Crystal's assertion in brief that a transfer of that aspect of this action to any other court would violate the rule enunciated in Celotex. However, as the Second Circuit recognized in Baldwin, whether another court ought to exercise its authority to determine the applicability of an order issued by the Bankruptcy Court "is a different question." 765 F.2d at 343.

In Baldwin, the Court of Appeals concluded that the New York District Court abused its discretion by issuing an order that effectively prohibited the Ohio Bankruptcy Court from determining the applicability of the stay because (1) that order would unduly interfere with the administration of the debtor's estate, which was ongoing and (2) interpretations of the stay order by courts other than the Bankruptcy Court presented the risk of inconsistent adjudications. As to the latter point, the Second Circuit emphasized that:

> If the applicability of the stay...is determined in various district courts throughout the country, the ability of the Bankruptcy Court to assure equality of treatment among creditors will be seriously threatened. Of course, even in the face of conflicting views among different district courts and different courts of appeals as to the reach of the stay, the necessary uniformity on issues of law affecting the

> Baldwin reorganization could ultimately be achieved by the Supreme Court. However, it is not a sound use of the District Court's equitable power to precipitate the need for such ultimate umpiring, and it is surely inadvisable to create the risk that conflicts as to the reach of the stay will remain unresolved. The necessary uniformity is best achieved by centralizing construction of the automatic stay in the Bankruptcy Court, subject to review in the Sixth Circuit, with ultimate review available in the Supreme Court if warranted. 765 F.2d at 349 (citations omitted).

Arguably some of the considerations relied upon by the Baldwin court are less compelling in this case, since Baldwin's reorganization was ongoing at the time the New York court issued its order, while Crystal's reorganization has long been approved and implemented. However, there are at least two reasons why this distinction is not compelling, and why the factors cited in Baldwin apply with equal force in this case. First, although Crystal's bankruptcy reorganization is completed, Crystal has recently filed with the Bankruptcy Court a Motion to Reopen Case in order that the bankruptcy judge may determine whether certain environmental damage claims recently asserted against Crystal by the State of Louisiana were discharged. This motion was granted and the substantive issues are presently scheduled for disposition by the Bankruptcy Court. Since it is apparent that the Bankruptcy Court will be required to resolve these claims regarding the scope of the discharge order, logically that court is in the best position resolve the applicability of the discharge order in this case. While the facts presented in connection with the State's claims may differ greatly from ARCO's claim, the legal issue of whether the

claims are subject to discharge is common to both matters. It is difficult to dispute the proposition that it is preferable to have the same court resolve multiple claims involving the same debtor and common issues of law -- particularly when that court is intimately familiar with the debtor's plan of reorganization and is commonly required to confront the issue legal presented (the scope of the discharge order, and whether it applies to a particular creditor's claim).

Second, as recognized by the court in Texaco, the question of whether a creditor's claim has been discharged touches upon legal and policy considerations that strike to the heart of bankruptcy law:

> [I]t is important to acknowledge that in some circumstances it may indeed be unfair, and impermissible, to apply the discharge provisions of the Bankruptcy Code where a claimant would thereby be barred from asserting otherwise valid claims which, as a practical matter, through no fault of the claimant, could not be asserted prior to confirmation. There is a tension between the need to protect the property and constitutional rights of the claimants, on the one hand, and the philosophy of granting discharged debtors a "fresh start" which underlies the bankruptcy laws in the United States. There is no question that the concept of the debtor's discharge is fundamental to that philosophy and, in particular, to the practical implementation of a plan of reorganization under Chapter 11. 182 B.R. at 950.

These important legal and policy considerations are best resolved by the bankruptcy courts and their reviewing courts, not in extraneous legal proceedings. It is one thing for a non-bankruptcy court to exercise concurrent jurisdiction over a bankruptcy issue

of limited scope or complexity (e.g., the determination in N.L.R.B v. Evans Plumbing Co., supra, that the agency's enforcement action falls within a clear statutory exemption to the automatic stay). It is another matter altogether for such a court, absent unusual or compelling circumstances, to issue a ruling on evolving and complex bankruptcy issues that are of vital importance to most creditors and debtors. The shape of bankruptcy jurisprudence should be molded by the bankruptcy courts.

Notwithstanding these considerations, ARCO argues that, pursuant to 28 U.S.C. §1404(a), convenience factors warrant a transfer of the entire action, including the Discharge Claim, to the District of Colorado. With respect to the Discharge Claim, it argues that the dispositive issue is "whether ARCO fairly contemplated the existence of...a claim against Crystal Oil at the time of the confirmation order," and that resolution of that issue will require testimony from numerous witnesses who reside in Colorado and reliance on other evidence located in that state.[3]

As discussed in Part II of this opinion, the non-bankruptcy aspects of this action arose in Colorado and, if ARCO's claims are not discharged, convenience factors and the interests of justice weigh heavily in favor of litigating this dispute in that state. It may also be that factors such as location of witnesses and evidence would in some ways make Colorado a more convenient forum for litigation of the Discharge Claim. However, convenience

[3] See ARCO's Reply Memorandum in Support of Motion to Transfer at 5 (emphasis in original). Whether ARCO has correctly posed the issue for purposes of the Discharge Claim is not decided.

factors alone are not determinative under §1404(a), and other factors weigh heavily against a transfer of the Discharge Claim.

First, the general rule is that the plaintiff's choice of forum is given considerable deference under §1404(a). Peteet v. Dow Chem. Co., 868 F.2d 1428, 1436 (5th Cir.), cert. denied, 493 U.S. 935 (1989); Schexnider v. McDermott International, Inc., 817 F.2d 1159, 1163 (5th Cir.), cert. denied, 484 U.S. 977 (1987); Clisham Management, Inc. v. American Steel Bldg. Co., 792 F.Supp. 150, 157 (D. Conn. 1992). Another way of stating the same principle is that the moving party must ordinarily make a strong showing that transfer is warranted. See, e.g., Davidson v. Exxon Corp., 778 F.Supp. 909, 911 (E.D.La. 1991); AT&T v. MCI Communications Corp., 736 F.Supp. 1294, 1306 (D.N.J. 1990); Lee v. Hunt, 431 F.Supp. 371, 380 (W.D.La. 1977). See also Shieffelin & Co. v. Jack Co. of Boca, Inc., 725 F.Supp. 1314, 1321 (S.D.N.Y. 1989) ("The moving party must make a clear-cut showing that transfer is in the best interests of the litigation.")

As discussed further in the next part of this opinion, the plaintiff's choice may be given less deference where none of the underlying events which form the basis of the controversy occurred in that district. As the regards the Discharge Claim, that exception does not apply. To the contrary, a plaintiff's choice of forum is entitled to substantial deference when it returns to the court from which an injunction originated and seeks a determination of its applicability. Considering the difficulties that arise from any other court attempting to address that issue, private

convenience interests are less significant than in the ordinary case.

Second, in addition to factors of private convenience, the §1404(a) inquiry requires consideration of "the interests of justice," i.e., any factors which relate to judicial economy and the efficient functioning of the court. Coffey v. Van Dorn Iron Works, 796 F.2d 217, 221 (7th Cir. 1986). Those factors include having all disputes resolved in the same forum, and, when the law to be applied is specialized, unsettled or complex, the desirability of having the matter adjudicated before a court familiar with that law. Id.

As previously discussed, important legal and policy considerations weigh in favor of the Bankruptcy Court resolving the Discharge Claim. The uniqueness of this case also requires considering the "interests of justice" factors from a different perspective than the ordinary case. At first glance, the result reached today (transfer of the Discharge Claim to Bankruptcy Court and transfer of the remainder of the action to Colorado) seems contrary to the preference for adjudicating all aspects of a controversy in a single forum. However, the interest served by this result is that the Discharge Claim will be resolved by the court that adjudicated the bankruptcy proceedings. Presumably the action transferred to Colorado will proceed to the merits only if the Bankruptcy Court determines that ARCO's claims have not been discharged. Celotex, supra. As to the question of what law applies (which normally arises in the context of the law of

different states), the Bankruptcy Court is obviously best suited to apply the law applicable to the Discharge Claim.

Thus, as to the bankruptcy issue, the interests of justice outweigh any private interests of convenience to the parties and witnesses. The Bankruptcy Court for the Southern District of New York reached essentially the same conclusion in Texaco, even though virtually all of the witnesses resided in Louisiana and it would have been less costly and more convenient for counsel to litigate there. 182 B.R. at 948-49. In this case, as in Texaco, the issue of whether the plaintiff's claim was discharged is best resolved by the Bankruptcy Court. Accordingly, the Discharge Claim will be referred to the Bankruptcy Court pursuant to 28 U.S.C. §157(a).[4]

II.

Were it established that ARCO's claims were not discharged, the remainder of the case (Crystal's declaratory judgment claim on the contract and ARCO's CERCLA damage claim) presents entirely different considerations which warrant a separate assessment under §1404(a). Simply put, it is a Colorado-based controversy, largely involving Colorado witnesses, Colorado evidence, some aspects of Colorado law and strong Colorado interests. Other than the fact that Crystal maintains its principal place of business in this

[4] 28 U.S.C. §157 permits referral to the Bankruptcy Court of both core proceedings arising under title 11 or "all proceedings...arising in or related to a case under title 11." The Texaco court concluded that an action to enforce a discharge injunction is a core proceeding under 28 U.S.C. 157(b)(2). 182 B.R. 943-44. Even were that not the case, the Discharge Claim is referable because it is "related to a case under Title 11." Id. at 944.

district, the clean-up controversy has little meaningful connection to Louisiana.

The plaintiff's choice of forum is entitled to less deference when none of the facts involved in the underlying dispute occurred in that district. Robinson v. Madison, 752 F.Supp. 842, 847 (N.D.Ill.1990); AT&T v. MCI Communications, supra, 736 F.Supp. at 1306. Therefore, while Crystal received the benefit of substantial deference with respect to its choice of forum for the Discharge Claim, it is entitled to less deference as regards the remaining controversy.

Under §1404(a), traditional factors relevant to the convenience of the parties include relative ease of access to proof, location of exhibits, possibility of viewing premises, enforceability of any judgment and the possibility that plaintiff is harassing defendants by selecting an inconvenient forum. Factors considered in connection with convenience of the witnesses include the cost to attend trial and availability of compulsory process. See generally Gulf Oil Co. v. Gilbert, 330 U.S. 501, 508, 67 S.Ct. 839 (1947). Of all private interests considered, the convenience of witnesses is most important. Southern Investors II v. Commuter Aircraft Corp., 520 F.Supp. 212, 218 (M.D. La. 1981).

Through an affidavit prepared by one of its attorneys, ARCO has identified 52 potential witnesses and provided a summary of the reason why each might be required to testify at trial. 46 of those witnesses reside in Colorado, and remaining 6 reside in Alaska, Pennsylvania, Kentucky, Texas, Washington and Utah, respectively.

Even assuming that some of the witnesses on ARCO's list will offer testimony relevant to the Discharge Claim but not the remainder of the action, and that some of plaintiffs' witnesses will be Louisiana residents, ARCO has established that most of the witnesses at the trial of the CERCLA claim will be Colorado residents.[5]

ARCO also contends that a Colorado forum would provide better access to non-testimonial sources of proof. According to the affidavit of its counsel, ARCO maintains in Colorado a repository of thousands of documents pertaining to the RICO site. ARCO also argues that another reason that the case should be tried in Colorado is that the trier of fact may desire to inspect the site. In this age of fax machines, VCRs and similar forms of technology, these considerations are entitled to less weight than in the past. Nevertheless, it is apparent that there would be easier access to some sources of non-testimonial evidence if the case is tried in Colorado.

As for the "interests of justice" inquiry, there are two

[5] Crystal argues that it will be unnecessary for the court to consider extensive documentary or testimonial evidence at trial, because its claim that ARCO assumed liability for environmental clean-up costs is supported by the plain wording of the contract (thereby rendering parol evidence inadmissible). ARCO responds that Crystal is relying on language which does not apply to its CERCLA claim. The court will not attempt to resolve this issue or otherwise pre-try the merits under the guise of deciding a §1404(a) motion. Instead, the court simply concludes, on the basis of the present record, that if the CERCLA claim proceeds to trial on the merits, most of the witnesses will be Colorado residents. On the other hand, if Crystal truly has a defense on the face of the contract that entitles it to prevail as a matter of law, then it could be expected to move for summary judgment, a remedy which it may pursue as easily in Colorado as in Louisiana.

factors which weigh in favor of a Colorado forum. First, the CERCLA claim may involve application of Colorado law. As a general rule, CERCLA claims are governed by federal law. Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1454, 1457 (9th Cir. 1986). However, as to certain issues, including the allocation of liability among private parties and the validity of purported release agreements, "state rules of decision will furnish an appropriate and convenient measure of the governing federal law." Id. at 1458. See also Olin Corp. v. Consolidated Aluminum Corp., 5 F.3d 10, 14 (2d Cir. 1993); John S. Boyd Co., Inc. v. Boston Gas Co., 992 F.2d 401 (1st Cir. 1993). Since the clean-up of environmental contamination from abandoned Colorado mines implicates important state and local interests, it is preferable for claims such as this to be resolved by Colorado courts -- especially since Colorado law may apply to some issues. Moreover, resolution of environmental claims arising from abandoned mines may require extensive consideration of local soil and water conditions, as well as the history of land usage in the area in question. See, e.g, State of Colorado v. Idarado Min. Co., 707 F.Supp. 1227 (D.Colo.1989). Thus, there are both policy and practical reasons why the Colorado District Court is better suited to adjudicate the CERCLA action.

Another relevant public interest factor is the interest in having all claims regarding clean-up costs for the Rico mine resolved in the same proceeding. ARCO has asserted that it also has claims against private landowners who reside in Colorado and who probably are not subject to personal jurisdiction in Louisiana.

If Crystal does not prevail before the Bankruptcy Court on the Discharge Claim, it would make little sense from the standpoint of judicial economy for ARCO to then be required to pursue parallel CERCLA actions in Louisiana and Colorado.

Finally, having noted that two public interest factors support a Colorado forum, the court is unable to identify any such factors which support the proposition that the CERCLA claim should be litigated in Louisiana. Considering the totality of the circumstances, ARCO has made the substantial showing necessary to warrant transfer of the CERCLA claim.

III.

Rule 21 of the Federal Rules of Civil Procedure provides that "[a]ny claim against a party may be severed and proceeded with separately." Pursuant to this rule, the district court is afforded broad discretion to sever issues. Brunet v. United Gas Pipeline Co., 15 F.3d 500, 505 (5th Cir. 1994). In order to facilitate the result reached today, the Discharge Claim will be severed from the remainder of the action.

* * *

Accordingly, the bankruptcy discharge claim set forth in paragraphs 23-32 of plaintiffs' original complaint is **SEVERED** from the remainder of the action. Plaintiff's "Motion To Refer Bankruptcy Issue to Bankruptcy Court" is **GRANTED**. By separate order issued this date, the severed bankruptcy discharge claim is referred to the United States Bankruptcy Court for the Western District of Louisiana.

The motion of defendant Atlantic Richfield Company to transfer venue pursuant to 28 U.S.C. §1404(a) is **GRANTED IN PART** and **DENIED IN PART**. The motion to transfer is granted insofar as it pertains to the nonbankruptcy claims (the claim set forth in paragraphs 16-22 of the original complaint and ARCO's counterclaim) and denied insofar as it pertains to the bankruptcy discharge issue. A separate order directing the clerk to transfer this action (after severance of the Bankruptcy Discharge Claim) to the United States District Court for the District of Colorado, and providing for a stay of the order of transfer pending any appeal to the District Judge, has been issued this date. The stay applies only to the order of transfer and not to the order referring the bankruptcy discharge claim to the Bankruptcy Court.[6]

THUS DONE AND SIGNED at Shreveport, Louisiana, on this 19th day of July, 1996.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

COPY SENT
DATE 07/19/96
BY: cd
TO: Dykes
Baird
Adams
Freeman
Milner
Stay Court

[6] As the pending motions are not among those excepted in 28 U.S.C. §636(b)(1)(A), nor dispositive of any claim on the merits within the meaning of Rule 72 of the Federal Rules of Civil Procedure, this ruling is issued under the authority thereof, and in accordance with the standing order of this court. Any appeal must be made to the district judge in accordance with Rule 72(a) and U.L.L.R. 19.09(a).